DOLLAH HJ. SALLEH

v.

TUAN HJ. MUHYIDDIN HJ. MOHD. YASSIN & ANOR.

HIGH COURT MALAYA, JOHOR BHARU
ZAKARIA YATIM J
[ORIGINATING SUMMONS NO. 31-706 OF 1988]
25 SEPTEMBER 1988

ADMINISTRATIVE LAW: *Decision by State Football Association to ban plaintiff - Declaration sought - Whether decision was ultra vires constitution of State Football Association - Jurisdiction - Whether ban effective outside State of Johore.*

CIVIL PROCEDURE: *Estoppel - Plaintiff filed suit and subsequently withdrew action - Filed afresh - Whether plaintiff estopped - Principles to be applied.*

The plaintiff was a football player employed by the Johore Football Association (JFA). On being offered fresh employment, the plaintiff resigned from JFA. The disciplinary committee found the plaintiff guilty of misconduct and proceeded to ban him initially for a period of three years. The JFA however informed the plaintiff he could appeal against the said decision.

The plaintiff appealed and at the same time commenced legal proceedings in the High Court. Subsequently the legal proceedings were withdrawn.

After obtaining the decision of the JFA which reduced the duration of the ban with the imposition of conditions, the plaintiff sought a declaration that the decision was *ultra vires* the constitution of the JFA and or the constitution of the Football Association of Malaysia.

Held:

[1] The ban against the plaintiff was not *ultra vires* the JFA constitution provided that the ban was restricted to the State of Johore.

[2] As the earlier suit had not been adjudicated the plaintiff is not estopped from commencing the present action.

[Order accordingly.]

Cases referred to:

Kok Hoong v. Leong Cheong Kweng Mines Ltd. [1964] 30 MLJ 49
Commissioners for Religious Affairs, Trengganu & Ors. v. Tengku Mariam binti Tengku Sri Wa Raja & Anor. [1970] 1 MLJ 222
Land v. Land [1949] 2 All ER 218
Tharmalingam v. Sambanthan [1961] 27 MLJ 63
Datuk Pasamanickam & Anor. v. Agnes Joseph [1980] 2 MLJ 92
Haji Osman bin Haji Aroff & Anor. v. Abdul Karim bin Pin [1988] 1 CLJ (Rep) 108
Datuk Murugasu v. Wong Hung Nung [1988] 1 CLJ (Rep) 30

Legislation referred to:

Rules of the High Court 1980, O. 21 r. 4

Other sources referred:

Mallal's Supreme Court Practice 2nd Edn., Vol. 1, p. 263
(The Doctrine of Res Judicata, Turner pp. 34 & 35) Not available in the blue book.

For the defendants - Ibrahim Hashim; M/s. Hassan Ibrahim & Co.
For the plaintiff - V. Chandran (Mohamad bin Ibrahim with him); M/s. Mohd. Ibrahim & Co.

JUDGMENT

Zakaria Yatim J:

In this originating summons, the plaintiff is seeking the order of the Court for declaration that the decision of the Johore Football Association (JFA) to ban the plaintiff from playing for any team other than the Pasukan Kebangsaan Malaysia and the Pasukan Kelab Talasco Insurance Sdn. Bhd. is *ultra vires* the constitution of the JFA and/or the constitution of the Football Association of Malaysia (FAM). Alternatively, the plaintiff asks for a declaration that the decision of the defendants to ban the plaintiff from playing football can only be restricted to Johor. The plaintiff also asks for further or other relief as the Court deems fit and the costs of this application.

The plaintiff was a football player for JFA from 1982 to 1987. Sometime in 1988 he resigned from JFA when he was offered fresh employment by Talasco Insurance Sdn. Bhd. On 19 July 1988 the JFA banned the plaintiff for playing football at all levels in Malaysia. The plaintiff was informed of the ban in a letter addressed to him from the JFA dated the same day. The letter told the plaintiff that the disciplinary committee of JFA had found him guilty of misconduct. The letter stated that the plaintiff was suspended and banned from playing football at all levels for a period of three years with effect from 18 July 1988. The plaintiff was also suspended and banned from holding any office in any team or any football association for a period of three years effective from 18 July 1988. The letter also said that the plaintiff could appeal to the appeal committee of the JFA against the decision contained in the said letter within a period of fourteen days from the date of the letter. The plaintiff appealed against the said decision on 28 July 1988. On the same date, he commenced legal proceedings against the JFA in the High Court, Johore Bahru, *vide* originating summons no. 31-643 of 1988. The legal proceedings were subsequently withdrawn on 8 August 1988. His appeal against the decision of the disciplinary committee of the JFA was heard by the appeal committee on 15 August 1988. The appleal committee devided on 16 August 1988 that the plaintiff's suspension be reduced to five months effective from 18 July 1988 to 31 December 1988 subject to the condition that he was only allowed to play for the national team, if selected and for his employers, Talasco Insurance Sdn. Bhd. The decision of the appeal committee was conveyed to the plaintiff in a letter dated the same day. The said letter is reproduced below:

> Encik Dollah bin Haji Salleh
> Talasco Insurance Sdn. Bhd.,
> Bangunan Talasco,
> 385, Jalan tuanku Abdul Rahman,
> 50100 Kuala Lumpur
>
> Tuan,
>
> Per: **Rayuan Terhadap Penggantungan Daripada Bermain Dan Pengurusan Bolasepak**
>
> Adalah saya diarah memaklumkan bahawa Jawatankuasa Rayuan Persatuan ini telah bersidang pada 15 Ogos 1988 untuk menimbangkan rayuan tuan dan keputusannya adalah seperti berikut:
>
> i) Bahawa hukuman penggantungan tuan daripada bermain bolasepak selama 3 tahun mulai daripada 18 July 1988 dikurangkan kepada tempuh 18 July 1988 - 31 December 1988.
>
> ii) Bahawa hukuman penggantungan tuan daripada memegang sebarang jawatan di dalam mana-mana pasukan, atau persatuan bolasepak selama 3 tahun mulai daripada 18 January 1988 dikurangkan kepada tempuh 18 January 1988 - 31 December 1988.

iii) Bahawa tuan hanya dibenarkan bermain bolasepak untuk pasukan-pasukan yang disebutkan di bawah ini sahaja:

a) Pasukan Kebangsaan Malaysia jika tuan dipilih.

b) Pasukan Kelab Talasco Insurance Sdn. Bhd. - Majikan tuan.

Sekian, terima kasih,

Yang benar,

(Mustafa bin Mohd. Said)
Setiausaha Ykh.

16 Ogos 1988.

At the commencement of the hearing of this originating summons, Encik Hassan Ibrahim, Counsel for the defendants raised a preliminary point of law for the decision of the Court. He submitted that the plaintiff, by his actions, was estopped from enquiring into the validity or ground of the sentence passed by the JFA. According to him the plaintiff's actions were: (1) discontinuing his earlier suit 931-643 of 1988), (2) apologising to the defendants; and (3) submitting himself to the jurisdiction of the disciplinary committee of the JFA and the appeal committee of the JFA. The apology letter referred to committee of the JFA. The apology letter referred to by Encik Hassan was exhibited to the affidavit of the first defendant affirmed on 27 August 1988. The said letter is reproduced below:

5 Ogos 1988

YAB Tuan Haji Muhyiddin b. Mohamed Yassin,
Menteri Besar Johor,
Merangkap Presiden
Persatuan Bolasepak Negeri Johor
No.4, Jalan Sutera 9,
Taman Sentosa,
80150 Johor Bharu

Yang Amat Berhormat,

Per: **Kenyataan Akhbar Dollah Salleh**

Adalah saya dengan hormatnya dengan hati yang iklas memohon maaf kepada YAB Menteri Besar Johor sebagai sifat Presiden Persatuan Bolasepak Negeri Johor, serta pegawai-pegawai YAB di atas tuduhan-tuduhan yang saya lemparkan terhadap mereka.

Dengan itu juga saya dengan sukacita menarik balik saman yang telah difailkan di Mahkamah Tinggi Johor Bahru melalui peguam saya.

Sekali lagi saya dengan rendah hati memohon berbanyak-banyak maaf diatas segala kesusahan yang menyinggong perasaan YAB terhadap perkara saya ini. Dengan hati yang iklas saya berharap YAB dapat memaafkan saya jua adanya.

Terima kasih.

Yang benar,

Sgd/-
(Dollah bin Haji Salleh)

In support of his argument on estoppel, Encik Hassan relied on a passage in the Privy Council case of *Kok Hoong v. Leong Cheong Kweng Mines Ltd.* [1964] 30 MLJ 49. But the facts of that case are entirely different from the present case. In that case appellant obtained judgment

in default against the respondent on 3 November 1954 for arrears of rental payments from 20 September 1953. Subsequently the appellant commenced another action on 14 June 1959 for monies allegedly to be due to him and other reliefs. The respondent contended that the appellant was estopped from proceeding in the subsequent action in view of the judgment in default obtained on 3 November 1954. The Privy Council decided that it was impossible to say that there was anything in the first judgment which decided the issue raised in the second action and therefore the estoppel claimed could not be maintained.

Encik Hassan next referred to a Federal Court decision in *Commissioners for Religious Affairs, Trengganu & Ors. v. Tengku Mariam binti Tengku Sri Wa Raja & Anor.* [1970] 1 MLJ 222. In that case the parties agreed to refer a document of *wakf* to and abide by the decision of the Mufti or the *Majlis Alim Ulama*. The Mufti gave his *fetua* that the *wakf* was valid. Wan Sulaiman J as he then was, subsequently declared that the *wakf* was invalid. The Federal Court decided that although the *wakf* was invalid the parties were estopped from its validity as they had agreed to abide by the decision of the Mufti.

It is clear that *Kok Hoong's* case does not apply here. In that case there was an earlier judgment in default and the Privy Council held that the appellant was not estopped from proceeding with the subsequent action. In the present case the earlier civil suit was withdrawn and no judgment was obtained. Similarly the facts in the *Tengku Mariam's* case are different from the present case and that case is not applicable here.

In my judgment the fact that the plaintiff has withdrawn the earlier civil suit does not prevent him from proceeding with the present action. When the case discontinued the Court did not impose any condition except to order costs to be paid to the defendants. See O. 21 r. 4 of the Rules of the High Court 1980. See also *Mallal's Supreme Court Practice* 2nd Edn., Vol. 1, p. 263. A learned writer has stated that the mere withdrawal of a summons will not in itself operate against the party withdrawing it so as to estop him from making the same or similar averment in future proceedings. *The Doctrine of Res Judicata* by Turner, pp. 34 and 35. In the present case the earlier suit was not adjudicated and the plaintiff is not estopped from proceeding the present action. See *Land v. Land* [1949] 2 AER 218.

Encik Hassan further submitted that the letter of apology quoted above operates as an estoppel against the plaintiff from proceeding with the present action. It is explicit in the letter that the apology was not for instituting the earlier proceeding but for allegations made by the plaintiff against the JFA. This is in fact conceded by Counsel for the defendants. The letter of apology has no bearing on the defence argument on estoppel.

Encik Hassan also argued that by submitting himself to the disciplinary proceedings of the JFA the plaintiff is not entitled to the present action. In my view the plaintiff was right in bringing the present action because he has exhausted all his remedies in the JFA. See *Tharmalingam v. Sambanthan* [1961] 27 MLJ 63. See also the judgment of Raja Azlan Shah CJ (Malaya), as he then was, in *Datuk Pasamanickam & Anor. v. Agnes Joseph* [1980] 2 MLJ 92.

I accordingly overruled the preliminary points of law raised by the defendants and proceeded to hear the case on the merits.

The issue raised in the originating summons is whether the decision of the appeal committee as stated in the letter quoted above is a valid decision.

It is not disputed that under Article 51 of the Constitution of the JFA, the Association has the power to remove any member or to suspend that member from taking part in the activities of the JFA.

In my opinion the suspension of the plaintiff as stated in the letter dated 16 August 1988 was a valid suspension in so far as it applied to the State only.

The plaintiff, in his affidavit in support of the originating summons complained that the said decision precluded him from playing for any state team especially for the Football Association of Selangor of which Kelab Talasco Insurance Sdn. Bhd. is a member.

This is confirmed by the second defendant who is secretary to PBNJ in his affidavit affirmed on 27 August 1988. In para. 7 of the said affidavit the second defendant stated that the ban imposed on the plaintiff by JFA was not only effective within Johore but also outside the state.

In my opinion the ban imposed on the plaintiff is effective only in the State of Johore. In *Haji Osman bin Haji Aroff & Anor. v. Abdul Karim bin Pin* [1988] 1 CLJ (Rep) 108, the Supreme Court in its judgment at p. 427 said,

> We are further of the opinion that the three-year ban against the respondent which took effect from 3 December 1985 should be effective within Kedah only. This is because the jurisdiction of KFA is limited to within the State. Article 7(c) of the constitution of the Football Association of Malaysia (FAM) in which the KFA is a member states, *inter alia*:
>
> > ... Each State Association shall cover a defined area and shall neither extend nor alter such area without having obtained the consent of the Council.
>
> The KFA has a similar provision under Article 9(c) of its constitution relating to its affiliated associations.

Since the ban imposed on the plaintiff is effective only in the State of Johore, JFA has no jurisdiction to extend the ban to other states.

Learned Counsel for the defence submitted that after the decision of the JFA, the plaintiff should have made further appeal to the Football Association of Malaysia (FAM) as provided under Article 53 of its constitution. According to the defence the plaintiff has not exhausted all remedies available to him domestically. With respect, although there is such a provision in the FAM Constitution, the plaintiff has no direct contractual relationship or privity with FAM and he cannot be and is not a member of FAM. See *Datuk Murugasu v. Wong Hung Nung* [1988] 1 CLJ (Rep) 30. What is required in the instant case is for the plaintiff to exhaust his remedies in JFA and this he has done so.

For the reasons stated above the decision of the JFA to ban the plaintiff from playing for any team other than the Pasukan Kebangsaan Malaysia and the Pasukan Kelab Talasco Insurance Berhad is not *ultra vires* the Constitution provided that the ban is not made effective outside the State of Johore. Cost in the cause.

Also found at [1989] 1 CLJ 198